

## Comments

## Responses

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

## DEPARTMENT OF FISH AND GAME

Eastern Sierra-Inland Deserts

Region 6

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January 12, 1999

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MOJAVE NATIONAL  
PRESERVE

Superintendent  
Mojave National Preserve  
222 East Main St., Suite 202  
Barstow, CA 92311

Dear Superintendent:

The California Department of Fish and Game (Department) has reviewed the document entitled Draft General Management Plan/Environmental Impact Statement, Mojave National Preserve, California (DEIS). The DEIS presents the proposed management approach and two alternatives for the management of the 1.6 million-acre Mojave National Preserve (MNP) in the northeastern Mojave Desert in California created by the California Desert Protection Act (CDPA). This General Management Plan (GMP) will serve to guide the National Park Service (NPS) in its management of the MNP for the next 10 to 15 years. The proposed action envisions the MNP as a natural environment and a cultural landscape where protection of native desert ecosystems and processes is assured. Other alternatives include existing management, and an optional management approach which provides for an increase in the facilities and services provided for public enjoyment.

The Department is providing comments on this Draft Environmental Impact Statement (DEIS) as the state agency which has the statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish & Game Code section 711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish & Game Code section 1802). The Department's fish and wildlife management functions are implemented through its administration and enforcement of the Fish and Game Code (Fish & Game Code section 702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. Sec. 15386(a)), and it is charged with the review of requests to appropriate water and the analysis of cumulative effects of diversions on fish and wildlife resources (Pub. Res. Code Secs. 10000, 10003).

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The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife.

Within the boundaries of the MNP there are over 2,000 nonfederal land parcels totaling nearly 230,000 acres over which the NPS has no management authority pursuant to CDPA Sec. 519. Most of these private parcels provide habitat for a variety of animal and plant resources for which the Department has management authority.

CDFG1

The majority of these private inholdings are adjacent to NPS lands, and both contain contiguous populations of animal and plant resources. Therefore, there is a need for close NPS coordination with the Department in the management of our shared resources as described in the Memorandum of Understanding (MOU) between our agencies.

Section 506 (b) of the CDPA conveys the intention of Congress that "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife on Federal lands and waters covered by this title..." Therefore, the Department intends to work with the NPS in the cooperative management of fish, wildlife, and plant resources and their habitats within the MNP pursuant to the Department's statutory authority and the MOU between the Department and NPS. With respect to hunting and the take of amphibians and reptiles, normal season and bag limits should apply within the MNP based on the objective of providing clear and consistent regulations for the public. The California Fish and Game Commission is the appropriate authority to adopt hunting and take regulations. These regulations should not be adopted via land use planning by federal agencies.

CDFG2

In addition, pursuant to Fish & Game Code section 2095 the Department shall participate to the greatest extent practicable in any federal consultation involving a state or federally listed threatened or endangered species. The Department also intends to work cooperatively with the U.S. Fish and Wildlife Service (USFWS) for the common purposes of planning, developing, and conducting programs to protect and enhance populations of all resident endangered, threatened, or rare fish, wildlife, and plants pursuant to the existing Cooperative Agreement between the Department and USFWS.

General comments:

The goals of the Proposed action, Alternative 1, are mostly appropriate and consistent with the CDPA. The purpose and need for the proposed action are expressed as the preparation of a General Management Plan for Mojave National Preserve, within the constraints imposed by Congress in the CDPA and NPS policy. However, the range of alternatives given is too narrow to meet the requirements of NEPA Regulations as outlined in 40 CFR 1502.14. The Department believes that additional actions to better enhance and protect fish, wildlife, and plant resources of the MNP, and meet NPS policy and Congressional intent, should be included as alternatives.

CDFG3

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CDFG1. Comment noted.

CDFG2. The National Park Service has long recognized the state's role in wildlife management in parks and entered into an agreement with them in 1971 for purposes of cooperating. Congress clearly provided the Park Service with a mandate in our 1916 Organic Act, to preserve the wild life, and other resources within park units. They also reiterated in the California Desert Protection Act our mandate to preserve wildlife by affording the new preserve full recognition and statutory protection to establish periods when, no hunting, fishing, or trapping will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. With both agencies having a role in managing wildlife in the preserve, the appropriate process for determining the Park Service's overall management strategy is to examine alternatives in the GMP planning process, then seek public input. Consultation with the California Department of Fish and Game, in partnership with the Desert Managers Group, has been occurring orally, in writing, in meetings, via our Advisory Commission and through the draft document. Once a coordinated decision on wildlife management is reached that meets both our preservation mandate and the hunting mandate, the National Park Service would ask the department to promulgate state regulations to implement this management goal.

CDFG3. Extensive public meetings, interagency coordination, and numerous meetings with the Mojave Advisory Commission yielded the alternatives presented in the draft plan. The stated planning objective throughout the scoping and alternative development phases was to develop a general management plan for Mojave National Preserve that met the intent of Congress, was consistent with agency guidelines for GMP content and scope, and was implementable without legislation. It was not the intent to craft an array of management alternatives that violate Congressional direction for the Preserve and required legislation before they could be

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CDFG4

The DEIS fails to identify the environmentally preferable alternative. 40 CFR 1505.2(b) states that the Record of Decision must specify the environmentally preferable alternative. In order for the public to adequately review and comment on the proposed project, the environmentally preferable alternative should be identified in the DEIS.

CDFG5

The description and analysis of the three alternatives do not offer sufficient detail to allow a complete comparison, and appear too weak to achieve their stated purpose. 40 CFR 1502.14 requires that all alternatives be rigorously explored and objectively evaluated, and that substantial treatment shall be devoted to each

CDFG6

alternative considered in detail. The Affected Environment and Environmental Consequences sections of the DEIS are weak and lack information and documentation for several conclusions drawn. Appendices should be included which substantiate any analysis (40 CFR 1502.18). The Environmental Consequences section of an EIS forms the scientific and analytic basis for comparison of alternatives (40 CFR 1502.16). The Environmental Consequences section of the subject DEIS does not contain scientific analysis sufficient for comparing alternatives.

The DEIS lacks information required for a detailed analysis. 40 CFR 1502.22 requires that if the information is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the EIS or state that the information is unavailable and summarize existing credible scientific evidence which is relevant to evaluating the impact. 40 CFR 1502.24 also requires that agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in EISs. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

CDFG7

No mitigation measures are offered to offset any negative impacts associated with implementing the proposed plan. NEPA Regulations define five categories of mitigation. Mitigation measures such as "Consult with....", "Conduct further studies...", "Prepare a plan to mitigate...", "Strive to protect the resource....", and "Monitor the problem..." are paper mitigation measures that do not solve environmental problems, and are considered inadequate under NEPA.

CDFG8

The DEIS proposes to defer several important planning efforts for as much as ten years (Future Planning Efforts, page 44), and offers no firm commitment to complete these plans at all. Until such plans can be finalized, the MNP will be managed utilizing the current GMP which is currently deficient in many respects, resulting in adverse environmental impacts. For example, continued livestock grazing without adequate grazing management plans could result in continued degradation of desert tortoise habitat. The Department believes that the DEIS should analyze and

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implemented. Mandates from the California Desert Protection Act, existing laws, policies, and regulations effectively restrict the range of alternatives with this objective in mind. The planning effort explored the traditional theme alternative approach (i.e. visitor use emphasis, resource protection emphasis, etc.) and decided that approach was not consistent with public input received during scoping. Therefore, we believe the range of alternatives is appropriate given these considerations.

In addition, the Environmental Protection Agency, the federal agency responsible for overseeing NEPA reviewed the draft plan and had no objections to the plan and commended the Park Service for developing a quality management plan for the preserve.

CDFG4. The Council on Environmental Quality (CEQ) and NPS guidelines on implementing NEPA suggest that the preferred alternative may be identified in the draft plan, but if the agency has no preferred alternative at that time it does not have to be identified. It does have to be identified in the final environmental impact statement. The draft plan did identify the agency proposed action, but that does not necessarily represent the preferred alternative. CEQ requires that the "environmentally" preferred alternative be identified in the record of decision.

CDFG5. See response to CDFG3.

CDFG6. We believe that the 63 pages of text in the 1998 draft plan devoted to describing the proposed action and the two alternatives is of sufficient detail to accomplish the stated planning objectives and address the range of issues for the management of the preserve for the first tier planning document. Alternative three is brief because it is the same as alternative one except for stated differences. The full text of alternative one is not repeated. Additional text has been added in the revised draft to address several concerns raised

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display the impacts associated with deferring these plans for that length of time. Deferring these plans to a later date does not meet the definition for mitigation pursuant to 40CFR 1508.20.

CDFG9

The DEIS does not stress the need for the cooperative management of resources within the boundaries of the MNP. As the NPS has no jurisdiction on considerable private lands within MNP boundaries, it is imperative that the NPS coordinate closely with state and other federal agencies that share management authority within the MNP boundaries. The MOU between the Department and NPS should be utilized to identify a protocol for such coordination.

CDFG10

The DEIS is generally lacking in sufficient information describing the resources present, the actions proposed, or the environmental consequences of the proposed actions. The Purpose and Need (p.21) states that the GMP only need focus on the unit's significant attributes and resource protection strategies in addition to other management strategies. However, given the likelihood that the MNP could be managed for a significant period of time without detailed specific management plans for a number of resource categories, it is imperative that this DEIS contain sufficient information to fully disclose the proposed actions, affected environment, and likely environmental consequences pursuant to NEPA.

CDFG11

The Department has thus far not had an adequate opportunity to fully coordinate with the NPS towards the management of the MNP for the conservation of biological resources. In addition, the Department finds the DEIS to be deficient in commitments to inventory and monitor these resources. Section 512 of the CDPA requires the

CDFG12

preparation of a management plan for the MNP which places emphasis on the ecological values of the preserve as well as wilderness, historic, and cultural resources. The protection of the ecological values of the MNP involves the preservation of its natural biological diversity. This is reaffirmed by the NPS in stating "The vision for the preserve is the protection and perpetuation of native species in a self-sustaining environment" (DEIS, p. 50). Both the NPS and Department, as well as numerous other parties, are signatory to the September 19, 1991 "Agreement of Biological Diversity" MOU (Biodiversity MOU). Section III.B. of the Biodiversity MOU states: "The basic means of implementing the strategy are to be improved coordination, information exchange, conflict resolution, and collaboration among the signatory parties." Section III.D. of the Biodiversity MOU states: "The signatories agree to pursue the establishment of measurable baselines and standards of diversity as a means of conserving biological resources over time." Section III.E. of the Biodiversity MOU states: "...the signatories agree to an adaptive approach in the development of bioregional strategies. Such an approach will place substantial emphasis on

CDFG13

monitoring, assessment, and research programs." The Department believes that the NPS should acknowledge the commitments of the Biodiversity MOU and coordinate closely with the Department in the protection and enhancement of desert biodiversity. Additionally, in conformance with the Biodiversity MOU, the NPS should make a firm commitment in the GMP to biological

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by public comments.

NPS general management plans represent the first phase of tiered planning for parks and provide the overall management framework under which other more detailed plans are developed. The NPS planning process involves several levels of planning that become increasingly more detailed and complementary by agreeing first on why the preserve was established and what resource conditions and visitor experiences should exist there, and then by becoming increasingly focused on how those conditions should be achieved. Decisions about site-specific actions are deferred to implementation planning when more detailed site-specific analysis would be done.

CDFG6. Some additional information has been added to the "Affected Environment" section. However, generally we believe the level of detail in the "Affected Environment" and "Environmental Consequences" sections is commensurate with the broad-scale decisions of this GMP. According to the regulations and NPS guidelines, the affected environment section of an environmental impact statement is intended only to give the reader a general understanding of the environment that may experience impact if the proposal or alternatives are implemented. This section is not intended to be a complete description of the environment of Mojave National Preserve. Data in this section should be commensurate with the importance of the impact. Data in the affected environment section is also supplemented, as directed by regulations, by appendix material and references. Appendixes included are those that were deemed relevant to the analysis. For instance, the draft plan includes lists of private lands, mining claims, water rights, and species of special concern in appendixes. It also references numerous other published sources and incorporates by reference a separate analysis of socioeconomic conditions.

The impact section is structured once again to build upon

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resource inventory and monitoring in order to identify biological resources and assess changes to them resulting from management activities.

Specific comments:

- CDFG14 P. 35, Springs, Water Rights and Air Quality.  
An additional issue which should be included is that the aquatic biology of spring and seep environments is poorly known. There is a need for the biological inventory of all spring and wetland areas including the identification of threats, impacts, and protection and restoration measures, and compliance with water rights requirements. Measures necessary to restore spring and wetland areas may conflict with wilderness prescriptions.
- CDFG15 P. 37, Planning Constraints and Mandates.  
The intent of the CDPA Section 506 (b) is that the State retain jurisdiction for fish and wildlife resources on MNP lands. Also, the Department has continuing management authority on significant private inholdings within the MNP. As such, the DEIS should include close coordination with the Department in all matters pertaining to fish, wildlife, and plant resources in the MNP pursuant to our joint MOU.
- CDFG16 P. 39, Actions Considered For Alternatives But Rejected.  
The Department believes that additional alternatives which comply with the CDPA and NPS policies are available but which were not considered in the document.  
A resource protection alternative which emphasizes biological resources over visitor use or other commodity interests, and which contains strong language and desired future conditions for those biological resources is one alternative which should be included. An alternative which should be explored is one in which proposed mineral developments and/or livestock grazing not be allowed unless the activity meets all of the regulatory approval standards.
- NEPA Regulations (40 CFR 1502.14) require that an EIS should include reasonable alternatives not within the jurisdiction of the lead agency. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. An alternative that is outside the scope of what Congress has approved or authorized may be evaluated in an EIS because the EIS may serve as the basis for modifying the Congressional approval in light of NEPA's goals and policies.
- CDFG17 P. 44, Future Planning Efforts.  
This section states that additional planning efforts may be undertaken over the next ten years (emphasis added). This does not provide a firm commitment to address any of these issues. Those management plans which can have direct effect on fish and wildlife resources such as the resource management plan, water resource, road, grazing, and inventory and monitoring plans should be incorporated into the GMP.

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differences between the existing management and proposed alternatives. The discussion in alternative 2 identifies the major effects of continuing existing management. Therefore, the discussion focuses on the major impact topics and builds from the existing management strategy by identifying differences between the proposed alternatives and no action. The impact section is also supported by a socioeconomic analysis done under contract and incorporated by reference.

- CDFG7. NEPA regulations call for measures to mitigate adverse impacts, *if not adequately covered by the proposed action or alternatives* (40 CFR 1502.16(h)). The DEIS covers a legislative change in managing agencies for existing federal lands and their subsequent actions. The proposed action typically protects and enhances the resources over the existing management alternative. The proposed alternative is essentially mitigation for the existing management alternative. Many of the actions proposed would mitigate adverse impacts currently occurring.
- CDFG8. See response CDFG5 for a description of NPS planning process. Many of the subsequent detailed planning documents are already in the initial stages of preparation.
- CDFG9. The plan has been modified. A statement has been added to the "Affected Environment" s" hunting section addressing the need to consult with CDF&G in managing the park's wildlife resources. It also addresses hunting on private lands in the preserve.
- CDFG10. See CDFG 5 and CDFG 6.
- CDFG11. The park met and consulted with the California Department of Fish & Game numerous times regarding the proposals presented in this document. For example:
- a CDF&G employee sits on the Mojave National Preserve Advisory Commission which has held numerous meetings during the development of the draft plan;
  - the preserve's superintendent met with the acting CDF&G

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These plans all involve resources which may be adversely affected by management activities promulgated by the DEIS. The DEIS should include an analysis of the environmental consequences of not implementing any proposed planning efforts.

CDFG18

P. 53, Water Resources.

As water in the desert is critical to the maintenance of natural resources, and often supports unique assemblages of species, the NPS should seek to protect, perpetuate, and restore wherever possible, surface water and groundwater as integral components of park aquatic and terrestrial ecosystems (emphasis added). In addition, the NPS should include a commitment to inventory all water sources, identify the fish, wildlife, and plant resources associated with these water sources, monitor compliance

CDFG19

with existing water rights, take actions to ensure compliance with existing water rights, acquire water rights when feasible, and collaborate with water rights holders to restore modified water sources to as natural a system as possible while still providing for valid existing uses. Wherever and whenever possible modified spring sources should be allowed to reoccupy their stream channel for at least 100 yards before being diverted. The priorities for such restoration should be based upon the presence of species assemblages in water sources which could benefit from such restoration.

P. 53, Water Developments.

The Department has worked in cooperation with the BLM and numerous volunteer groups since the early 1950s to develop water throughout the MNP to benefit all wildlife species. The ranching community has worked even longer on water developments that, although designed for cattle, have also helped support wildlife. The construction, labor, and maintenance costs associated with these endeavors have cost

CDFG20

millions of dollars. The Department believes that additional water developments should continue to be constructed if they can be shown to further benefit wildlife populations. The removal of any developed water source, especially to lower population levels of wildlife species, would be opposed by the Department. The diversity and high populations of wildlife within the MNP are what make the area a very special place. The overgrazing eluded to by a BLM biologist (p.127) that was discussed in the guzzler section has not been observed by the Department to occur near big game guzzlers. The Department agrees that all small game guzzlers should be retrofitted with exclusion devices and any new construction would include fencing to eliminate concerns about the possibility of tortoise mortality.

CDFG21

P. 55, Sensitive Species.

Any active management programs conducted by the NPS should be coordinated with the Department and with the USFWS, if involving state and/or federally listed species. The proposed cooperative agreement between the NPS and California State University (CSU) should include the Department. The Department has management and recovery responsibilities for the Mohave tui chub pursuant to the California Endangered Species Act (CESA) and by agreement with the USFWS. Any proposed habitat manipulation activities (such as cattail removal and/or pond dredging) may

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Regional Director several times in her Long Beach office and with a senior biologist in Bishop;

- the acting CDF&G Regional Director was a member of the interagency Desert Managers Group (a forum where park planning has been a typical item of discussion);
- the CDF&G was invited in writing to participate as a cooperating agency
- in the planning process that resulted in this document, but the team received no response;
- the CDF&G was invited to over 30 public meetings
- CDF&G employees and Mojave staff and management have had joint visits to five of the six big game guzzlers.
- Mojave staff have joined CDF&G on their annual bighorn sheep census.

The preserve maintains an open door policy and encourages discussions with CDF&G regarding preserve resource planning.

CDFG12. The NPS recognizes, as stated on page 62 of the 1998 draft plan, the importance of inventorying and monitoring park resources. Funding for a national program is being sought on a national level and all NPS units would be allowed to submit proposals against this national fund for park programs.

CDFG13. The National Park Service acknowledges the Biodiversity MOU and believes that the preserve's goals and purposes as stated in this document complement that MOU. We are committed to the preservation of biodiversity and are pleased to see that the department is also committed. We look forward to developing the specific aspects of our program with your cooperation, and that of other entities. Unfortunately, specific details for all the various aspects of managing a complex park like Mojave cannot be provided in a single first tier-planning document.

CDFG14. We agree that such an inventory is needed. However, the list on page 35 of the 1998 draft is from scoping in 1995–96.

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require a Streambed Alteration Agreement pursuant to Section 1600 et. seq. of the Fish and Game Code and may require other permits issued by the Department regarding potential take of a listed species. Section 514 of the CDPA requires a cooperative agreement between the NPS and CSU for the "purposes of managing facilities at the Soda Springs Desert Study Center." Activities involving the manipulation or potential take of a state and federally listed species are not authorized to be included in such an agreement. The Endangered Species Act, CESA, and Fish and Game Code require that the Department be involved in any such activities.

P. 56, Desert Tortoise.

The discussion lacks specificity and is insufficient to allow a determination of the effects of the proposed action on tortoise populations. The DEIS should list the threats, predominant occurrences, effects, and studies needed, and list those actions specific to mitigating those threats. Threats include: urbanization, disease, construction, OHVs, roads and highways, agriculture, utility corridors, fire, livestock grazing, landfills and transfer stations, subsidized predation, mineral development, non-OHV recreation, invasive weeds, garbage and litter, vandalism, handling and manipulation, drought, and commercial use. The NPS should bring together a Task Group of responsible agencies and tortoise specialists to devise specific management prescriptions for the protection of tortoise populations.

The measures contained in Appendix E are valid and should be implemented by the NPS and included in any Special Use Permits issued by the NPS.

The Department concurs with the actions listed except that modifying bird hunting during state seasons and elimination of all random target shooting do not appear to contribute significantly to tortoise recovery; these proposed actions should be deleted.

The actions proposed should include, but are not limited to, the following specific measures to eliminate or reduce threats to the tortoise which are not contained in Appendix E.

- ☐ Encourage tortoise disease research within the MNP relative to management.
- ☐ Educate the public about not releasing captive tortoises.
- ☐ Authorized tortoise handlers should use sterile techniques to avoid disease spreading.
- ☐ Increase ranger patrols to enforce tortoise protective measures.
- ☐ Work with OHV groups to establish education brochures and other tools.

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Adding statements to that list would not be appropriate. We added a statement in the proposed action indicating the need for such an inventory.

CDFG15. See response to CDFG9.

CDFG16. See response to CDFG3.

We believe the proposed action is a strong resource protection alternative and does contain strong language for the protection of biological resources. The proposed action also addresses mineral development activities and emphasizes that they would not be allowed if they don't meet NPS regulatory standards (see page 100 of 1998 draft plan). The Park Service manages grazing under our Organic Act, Management Policies, and various other environmental laws that pertain to the NPS and the specific park unit; therefore, standards must be developed for each park with authorized grazing activity. Page 87 of the 1998 draft plan addressed development of resource protection measures in the grazing management plan.

CDFG17. The list of future planning needs in the draft plan has been updated to include priorities and some additional plans. NPS planning policy directs the park to prepare certain of these plans. Priorities are often driven by the most compelling need and funding. Several of the identified plans have already been initiated, such as the resource management plan, fire management plan, wilderness management plan and development concept plans for Hole-in-the-Wall and Soda Springs. Most of these plans also involve preparation of an accompanying environmental document that will provide for public review and input.

CDFG18. The plan clearly states that water and its protection is an important issue. The Mojave National Preserve staff will continue its ongoing work to inventory water features and associated biotic resources and developing plans for their protection and restoration (if needed). The 1998 draft plan

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- ☐ Fire suppression activities should include protective measures for tortoises such as 1) a mix of aerial attack with fire retardant, hand tools for firebreak and attack engines limited to public roads and designated open routes, 2) use of earth moving equipment or vehicle travel off public roads and designated open routes would only be allowed where needed to protect life and property, 3) post suppression mitigation includes rehabilitation of firebreaks and other ground disturbances, 4) fire crews unfamiliar with tortoise protection should receive appropriate education.
- ☐ Allotment Management Plans should be designed to minimize adverse impacts to tortoises. Forage allocations/utilization should be based upon best available scientific information to provide adequate residual forage for tortoises. Adequate monitoring is required to ensure compliance with grazing strategies in the AMPs. The herding of cattle should be minimized, and cattle allowed to disperse throughout the area of use.
- ☐ A raven eradication program should be implemented targeting ravens which are preying upon tortoises in specific areas.
- ☐ Investigate and eliminate other anthropogenic sources of raven food.
- ☐ Ensure that refuse containers in residential areas have self-closing lids.
- ☐ Mineral developments within tortoise habitat should be closely reviewed for potential acquisition (CDPA Sec. 509).
- ☐ Restoration of mineral developments should strive to reclaim appropriate lands to constitute tortoise habitat as a goal.
- ☐ Upland game guzzlers in tortoise habitat should be modified to eliminate concerns about the possibility of tortoise mortality.
- ☐ Invasive weeds such as red-stemmed filaree, rancher's fiddleneck, and several mustard species should not be introduced within tortoise habitat in highway, or other, landscape design.
- ☐ Create and/or enforce ordinances against illegal dumping.
- ☐ Implement programs to clean up existing dumps on private and public lands.
- ☐ Efficient litter removal from various recreation sites and problem areas.

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states on page 62 that inventory and monitoring of the preserve's natural resources is important and a comprehensive strategy would be developed through the preserve's resource management plan.

We feel the extensive water rights discussion provides a strong resource preservation strategy. The suggestion to work with holders of water rights to restore modified water sources to good natural conditions while still allowing for valid existing uses is a good suggestion as has been included in the this document. Further, Mojave is in the process of hiring a hydrologist.

CDFG19. The last statement on page 61 of the 1998 draft plan provides for the purchase of water rights. In addition, the discussion on page 84 indicates that the NPS would seek funding to acquire the majority of private lands and interests based on priorities in the *Land Protection Plan* (appendix C).

CDFG20. Comments noted.

CDFG21. Mojave National Preserve would consult with USFWS and CDF&G for any proposed management actions involving the Mojave tui chub.

CDFG22. The suggestions you mention are specifically addressed in the Recovery Plan for the tortoise. Our proposed management strategy identified in the proposed action would implement the measures suggested in that document for the preserve. Many of the actions listed on page 56 of the 1998 draft plan have already been implemented. The proposed action has been modified in the revised draft plan to address some of these actions in more detail. We are also committed to modifying our proposed management based on the most current research results.

CDFG23. Comment noted.



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- ☐ Cross country vehicle travel in tortoise habitat will not be allowed for commercial activities.
- ☐ Commercial activities that result in ground disturbance or adverse effects would not be allowed in tortoise habitat.
- ☐ Determine alternatives for disposition of tortoises that have been handled or released into the wild. Educate the public regarding risks associated with handling or relocating tortoises.
- ☐ Biological monitors will handle tortoises per "Guidelines for Handling Tortoises During Construction Projects", 1996.
- ☐ A description of both federal and state permits which are required prior to scientific or other manipulation of tortoises.
- ☐ Timing of scientific studies may need to be modified due to persisting drought conditions.
- ☐ Allotment Management Plans should consider drought conditions in forage allocation to ensure adequate forage production for tortoises.

CDFG25

P. 58, Burros.

The Department agrees that a "no burro" policy being established at the MNP is an appropriate administrative decision. However, fences that may be constructed on the preserve boundary at Clark Mountain must be compatible with bighorn sheep movements that occur in the area. After the rut, mountain sheep tend to migrate from the Clark Mountains to the Mesquite Mountains or through the north Clark Mountains and into Nevada.

CDFG26

P. 62, Inventory and Monitoring.

The DEIS is deficient in describing programs regarding these subjects. These are two extremely important components of any management plan and deserve to be treated separately. The DEIS is deficient in adequately describing the fish, wildlife, and plant resources present within preserve boundaries. In particular, information is not presented regarding general aquatic species present within aquatic habitats within the preserve, and there is no general description of reptile and amphibian species present nor any distributional information. Although it is the intention of the NPS to manage for multiple species and protect habitats for all native species, there are still ongoing

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CDFG24. The hunting section has been modified to adopt CDF&G terminology and seasons for upland game birds, small game and big game. However, random target shooting is not an appropriate activity in the preserve. Visitor safety and resource protection issues take priority.

The specific measures you identify have been provided for in our proposal.

CDFG25. The National Park Service would consult with California Department of Fish & Game before constructing any fences to prevent burro access.

CDFG26. The general management plan is not intended to be a detailed, comprehensive plan. See responses CDFG3 and CDFG6. Issues and concerns to be considered in the GMP were gathered during scoping in 1995 and 1996. Issues did not focus on vegetation, soils, and wildlife in general, but rather on specific sensitive species or habitats. In addition, exotic or alien species were also a concern.

However, this does not mean that the preserve ignores these resources. In fact, considerable data has been gathered over the years on the preserve's vegetation and wildlife resources by the former BLM staff, researchers, students and by groups like yours. Recently, an effort was undertaken to prepare a comprehensive vegetation map for the entire Mojave Desert, including all of the preserve. The U.S. Geological Survey's Biological Resources Division has been conducting this work and reports and maps are now being finalized and should be available for the preserve's use later this year. A brief section describing the preserve's vegetation and wildlife resources has been added to the "Affected Environment" section, and a statement of our management goals added to the proposal.

The Mojave National Preserve inventorying and monitoring program has not been developed. It is not being proposed as

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activities (grazing, mining, water diversions, fire management, rights of way, etc.) which can adversely impact habitats for native species. The DEIS should disclose the species present, their distribution, and status if known. Where information is lacking the commitment to an inventory program should be described, including a time frame and funding requirements. Without this baseline inventory information it will not be possible to properly prioritize land acquisition activities, and manage grazing and other uses without potential detriment to native species.

CDFG27

MNP planning should be a dynamic process that does not end with the publication of the Management Plan. Monitoring and evaluation activities provide information to help determine whether or not programs are meeting the Plan's objectives. It is through this process that corrections and adjustments are made in management activities, the degree of implementation is assessed, and the need for change is determined. In the evaluation stage, monitoring information should be compared with Plan requirements. Differences are a justification for Plan amendments. Monitoring processes should be described for soil productivity, water quality, range utilization, listed species, etc. A monitoring evaluation process should also be disclosed which describes how monitoring information will be compared to Plan requirements, and alternatives for rectifying differences.

CDFG28

The monitoring section should also include a description of how management activities will be monitored. This should include the following as a minimum: 1) activity to be measured, 2) monitoring objective, 3) monitoring technique, 4) expected precision and validity, 5) frequency and reporting period, 6) variation from Plan objectives which will trigger further action, and 7) annual cost. Currently, neither inventory nor monitoring are included in operational costs for Plan implementation; these should be included.

CDFG29

P. 68, Hunting, Trapping, and Fishing.  
The intent of the NPS to not permit the collection of reptiles and amphibians without a NPS scientific collecting permit could be contradictory to state law. Native reptiles and amphibians, except those protected, may be taken with a state sportfishing license. Protected reptiles and amphibians may not be taken or possessed. The requirement for an NPS scientific collecting permit for non-protected reptiles and amphibians, or the issuance of such a permit for fully protected reptiles and amphibians could be contrary to state law. This subject should be resolved by means of a supplemental MOU with the Department.

The California Desert Protection Act specifically states in section 506 (b), that "The Secretary shall permit hunting, fishing, and trapping on lands and waters within the preserve designated by this Act in accordance with applicable Federal and State laws except that the Secretary may designate areas where, and establish periods when, no hunting, fishing, or trapping will be permitted for reasons of **public safety, administration, or compliance with provisions of applicable law** (emphasis added).

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an action within this plan. When the program is developed it will abide by all laws regarding public review.

CDFG27. We absolutely agree with you that planning is a dynamic process. The NPS planning process for a park is designed in tiers to be flexible and dynamic. It begins with a general management plan that sets the overall management strategy for resource protection and visitor use, addresses the purposes and significance of the unit, and establishes carrying capacities. This first plan is designed to remain effective for at least 15 years, but generally, much of it won't change significantly. The most dynamic parts of park planning are the "implementation plans" that are prepared to implement the general management plan. These plans may change as often as necessary to accommodate new information. The resource management plan is a dynamic document that is intended to be reviewed and updated annually.

CDFG28. The details of a monitoring program are not appropriate in an NPS GMP. These specifics need to be addressed in detail in an inventory and monitoring plan.

CDFG29. The preserve was established with several conflicting mandates that need to be balanced in this management plan. The National Park Service has a core mission of resource preservation. This desert park also serves as an area for research and education on desert ecosystems. Hunting is a permitted use that needs to be balanced with other park purposes. The proposed action allows more hunting opportunities than the state's Providence Mountain State Recreation Area that is within the preserve's boundaries. We do not believe that Congress envisioned the collection of reptiles and amphibians with a fishing license when they made a last minute compromise to allow hunting in the preserve. We believe these resources should be fully protected in this desert park and not exploited. We believe

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Except in emergencies, regulations closing areas to hunting, fishing, or trapping pursuant to this subsection shall be put into effect only after consultation with the appropriate state agency having responsibility for fish and wildlife. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the States with

CDFG30

respect to fish and wildlife on Federal lands and waters . . .". Yet, the NPS in this DEIS is trying to eliminate the hunting of cottontail and jackrabbits, coyotes, bobcats, and the collection of reptiles by properly licensed individuals. The MNP provides some of the finest hunting opportunities for all of the above mentioned species of anywhere in southern California and should continue to do so for some time. The Department does not believe that the NPS has the authority to violate the Act under the guise of public safety, administration, or compliance with provisions of applicable law. More importantly, however, NPS has failed to comply with that portion of the Act that requires them to consult with the DFG before any such closures shall be put into effect. Congress has made it very clear that there was no intent to usurp the authority of the DFG by providing the NPS with any "game management" or "wildlife conservation" authority that normally is deemed the responsibility of the various States.

CDFG31

The limitations the NPS is proposing to prevent hunting at least 500 yards from any road, building, or water source are over-restrictive, unenforceable and there are existing laws that adequately protect the public's safety. These include: Penal Code section 374(c) that states it is illegal to discharge a firearm from a roadway or upon a road, PC section 246 forbids the act of shooting in the direction of an occupied dwelling, Fish and Game Code section 3004 which prevents the discharge of any firearm within 150 yards of an occupied dwelling without the owner's permission, and Title 14 of the California Code of Regulations section 730 that makes it illegal to camp or stay within 200 yards of any water source for a period exceeding 30 minutes. These existing laws are adequate to protect the public's safety, and are much more enforceable than those proposed by the NPS. Five hundred yards is an excessive distance for persons unfamiliar with an area to determine if a road or a water source is nearby.

CDFG32

The real impetus behind the hunting restrictions appears to relate to the protection of the desert tortoise and the occasional dead tortoise being found with a gunshot wound, but does the NPS believe that hunters are responsible? It doesn't appear from the document that this is the case, as the term "vandal" is always used to label those responsible. "Vandals" with their "illegal guns" will continue to be present and restrictions on hunting will not alter their behavior. The Department disagrees with the statement on p.169 that states "Restricting the hunting season would allow better control of illegal use of weapons in the non-hunting season. . . should result in fewer tortoises being killed. . ." (repeated on p. 172, p.179 and on p.190). The same strategy of tortoise protection was used to eliminate target shooting (plinking) within the MNP, but does the NPS possess any data that show their actions have had any impact? We believe much more time will be required to evaluate these findings before any restrictions should be placed on hunters or the time of year in which they hunt.

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that collection of reptiles and amphibians should follow federal law and NPS regulations.

CDFG30. The proposed action alternative has been modified to allow for the hunting of small game, upland game birds, and big game during their normal state seasons, with one exception. Rabbit hunting would be limited to September through January in accordance with recommendations of the desert tortoise recovery plan to eliminate firearms discharge from September through February. Alternative two addresses the option of allowing continued hunting of coyotes and bobcats.

See responses CDFG2 and CDFG11 regarding consultation with California Department of Fish & Game on this proposed plan.

CDFG31. The proposed action alternative has been modified to follow existing state laws regarding trapping and shooting restrictions.

CDFG32. The proposed action is following the recommendations of the desert tortoise recovery plan regarding the recommended elimination of firearms discharge from September through February, except for big game or upland game birds. The National Park Service does not believe that responsible hunters are shooting desert tortoises, nor do we have any data for the preserve on tortoise deaths resulting from shooting. However, we do believe that the proposed action alternative would create a situation where shooting should not be occurring the park from February through August, during the active tortoise period. By limiting shooting to this period, it would be easier for visitors and staff to identify illegal shooting activity because firearms should not otherwise be discharged except during the open season. We believe that allowing hunting half the year, and providing a park free of shooting during the other half is a reasonable balance.

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CDFG33

P. 70, Backcountry and Roadside Camping, and Camping in Areas of Desert Tortoise Critical Habitat and Other Sensitive Areas.

To protect tortoise habitat and reduce human-tortoise encounters, camping should be restricted to within 100 feet of existing designated routes. We concur that campsites should be more than 200 yards from any water source.

CDFG34

P. 76, Wilderness.

The Department realizes that Congress has already designated almost 700,000 acres of wilderness within the MNP, but much of that area does not meet the criteria of wilderness as defined in the Wilderness Act of 1964. There are only a limited number of places within the MNP where "man's work is substantially unnoticeable" especially within "at least 5,000 acres".

CDFG35

P. 84, Grazing/Range Management.

This section does not adequately describe how the NPS will manage livestock grazing without adverse impacts to fish, wildlife, and plant resources. The described contents of the proposed grazing management plans do not disclose sufficient information to allow the evaluation of the effects of the proposed management on the affected environment, including listed and sensitive species. The DEIS should state that grazing management plans will be used as instruments to guide the avoidance of unacceptable damage to soil, water quality, vegetation, and sensitive species. These plans will be amended, if required, to include adopted means of resolution and needed mitigation measures. If mitigation is unsuccessful in preventing unacceptable resource damage livestock grazing will be reduced within problem areas. This section should contain, at minimum, the following standards and guidelines which describe management objectives, and measures which mitigate grazing impacts:

- ☐ Assess impacts on riparian and other sensitive areas within permit boundaries during grazing permit re-evaluations. Require structural and/or non-structural measures to correct deterioration of riparian-dependent or other sensitive resources.
- ☐ Graze areas only when "range ready".
- ☐ Conduct annual and perennial forage monitoring.
- ☐ Conduct annual utilization checks in key wildlife habitats in grazing areas.
- ☐ Achieve or maintain rangeland in "satisfactory" condition.
- ☐ Grazing Management Plans will display use, improvement, maintenance, and other management data.
- ☐ Use criteria will be established and documented for each unit of each grazing

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CDFG33. This section has been clarified to reflect that vehicle camping may occur only in previously disturbed sites along open routes of travel outside wilderness. Vehicles may not leave the road surface at any time and park on undisturbed vegetation. Backpack campers may camp anywhere in the preserve outside designated day use only areas, but must erect their tent out of sight of paved roads. The primary issues with camping would then be with ensuring that visitors do not disturb tortoises they encounter and vehicles are examined before moving them to ensure tortoises have not crawled under them for shade. The preserve would undertake a public education initiative relative to camping in tortoise habitat.

CDFG34. The designation of wilderness was a congressional action and is not a consideration of this plan. However, we disagree with your assertion. We believe that the wilderness designated in the preserve meets the criteria of the Wilderness Act.

CDFG35. The general management plan is a broad planning document that provides the overall framework for management of park resources. Your suggestions are mostly incorporated already in our grazing permit stipulations or the USFWS Biological Opinion requirements.

The Park Service inherited grazing as an existing federal activity and the California Desert Protection Act specifically allows grazing to continue. The same protections that were required by the state and federal governments will be provided under NPS management. The proposed action calls for the National Park Service to develop a grazing management plan that would, at a minimum, follow existing federal and state guidelines (e.g. Clean Water, Cultural Resource Protection and Endangered Species laws) and additional protections provided for the park's natural and cultural resources in compliance with NPS policies and regulations.

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allotment. These criteria will be developed using long-term trend studies and identified limiting factors, and will define permissible grazing levels.

- ☐ The condition of soil and vegetation must be maintained or improved. If they are in satisfactory condition, then they must be maintained that this condition. If they are in a less than satisfactory condition, then allowance must be made for improvement in condition.
- ☐ Locate salt at least one-quarter mile away from riparian or other sensitive areas.
- ☐ Current desert BLM management regarding above ground forage biomass requires termination of grazing when forage biomass falls below 350 lbs/acre. The NPS should conduct a thorough literature search regarding grazing impacts on desert tortoises and promote and support research, if required, to determine desirable forage utilization standards which are not detrimental to tortoise recovery.

CDFG36

P. 88, Plan Implementation.

The DEIS is deficient in disclosing the types of positions, and activities to be performed, by the proposed additional 56 staff members. These facts should be disclosed and a description provided of how this staff will allow the realization of Management Plan objectives. This section should contain plans for monitoring and evaluating implementation of the Management Plan, and outline standards and criteria for Plan amendments if required. In addition, this section should describe action plans to achieve Plan objectives and commitments. These action plans should include the management practice or activity, location, acres involved, and costs. Management practices should be specific enough to clearly describe the required action. Some examples are: progressive soil resource inventory, vegetative inventory, range structural improvements, range utilization monitoring, desert tortoise inventories, etc. Table 3 should be significantly expanded to include more of the activities required to meet Plan objectives.

CDFG37

P. 91, Alternative 2: Existing Management (No-Action).

This alternative and Alternative 3 do not meet the letter or intent of the CDPA and state laws and policies. Neither should be selected for implementation.

CDFG38

P. 92, Sensitive Species.

Alternative 2, the no action alternative, includes no changes in the management of the Mohave tui chub at Soda Springs. This population would continue to be maintained in cooperation with the Department, USFWS, and the Desert Studies Center consortium. This status quo complies with existing laws and regulations, and should be incorporated into the proposed alternative.

CDFG39

P. 113, Affected Environment, Natural Resources.

## Responses

CDFG36. This is a general planning document that provides a framework for management of the preserve for the next 15 years. Specific positions and funding for resource management issues are provided in project statements prepared as a component of the resource management plan. Only when the details of a resource project are spelled out can funding and staff needs be accurately projected. The positions and dollars identified on page 88 of the 1998 draft plan are approximations based on full implementation of everything identified in the proposed action. To break this down by type of position and activities would create unrealistic expectations. The purpose of this section is only to provide the public and NPS management with an approximation of the impact of full implementation of the general management plan over its 15-year life.

CDFG37. Comment noted.

CDFG38. The proposed action has been modified to reflect that the National Park Service would implement the recovery actions for the Mojave Tui Chub in consultation with California Department of Fish & Game and the U.S. Fish and Wildlife Service. The cooperative agreement has been retained as a means of implementing this commitment.

CDFG39. See response CDFG2.

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This section fails to adequately disclose natural resources and their status within the MNP. A thorough description of the following resources should be added: 1) soils, including soil characteristics, rangeland productivity, water holding capacity, soil stability, and activities affecting soil stability; 2) water quality, including spring sources, surface flows, Piute Creek, sediment sources, and activities that can impact water quality, implementation of BMPs, and cumulative watershed effects; 3) water yield, where known, including spring yields, and lengths of impaired and unimpaired spring stream reaches.

CDFG40

P. 116, Other Water Sources.

The number of the over 200 springs and seeps which have been modified, and the extent of modifications should be summarized, and their plant and animal resources identified, so that the potential for restoration can be ascertained and prioritized. Conversely, those that are still unmodified should be identified, existing and potential threats identified, and the plant and animal resources associated with them described so that protective measures can be proposed.

CDFG41

P. 118, Rocky Mountain Mule Deer.

The Plan cites Burke, a librarian and not a biologist, as stating "the department estimates that about 25 deer are taken per year"; in reality both the five and ten year averages are almost double that number at 48 bucks per year. The East Mojave provides an opportunity for 500 deer tag holders to enjoy the area and their pursuit of buck deer. The Department manages this area for the excellent value it provides to licensed hunters of the state. As mentioned in the Plan (p. 150), the opening weekends of deer and upland game bird seasons, such as chukars, are some of the busiest times of year for visitation in the MNP.

CDFG42

P. 129, Cave Resources.

If known, this section should more fully describe the animals and plants associated with these cave environments and the NPS should commit to a monitoring program. If not fully known, the NPS should propose to inventory the biological resources to ascertain species status, threats, and protective measures.

CDFG43

P. 165, Grazing/Rangeland.

This section does not fully describe the affected environment impacted by grazing. For each allotment the discussion should include current utilization standards, compliance monitoring results of those utilization standards, range condition and trend information, and disclosure of violations of current allotment plan conditions, if any. These data should be available from BLM.

CDFG44

P. 169, Impacts on Natural Environment.

This section does not adequately disclose the environmental consequences of the proposed action. It should be greatly expanded to include, at a minimum, the topics constituting the proposed action such as air quality, viewsheds, water resources,

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CDFG40. We agree that this is a high priority need and we have identified it as such in our internal resource budget priorities. However, this detailed information is not yet available, nor appropriate for this planning document.

CDFG41. The citation has been changed.

CDFG42. A statement has been included that the National Park Service is committed to inventorying its cave resources.

CDFG43. The plan has been modified to include available information.

CDFG44. The impacts to air quality, viewsheds, water resources, sensitive species, introduced species, etc. are identified in the "Environmental Consequences" section. We have not projected any major impacts beyond those listed.

Also see response CDFG6.

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sensitive species, introduced species etc. and characterize the likely impacts of the proposed actions on these MNP resources. For example, what would be the environmental consequences for surface springs in the MNP if the NPS implemented all of the actions listed to manage and protect federal reserved water rights under the Proposed Action?

CDFG45

P. 203, Agency Consultation.

The Department is not listed as having been specifically contacted regarding the preparation of this document. As having the responsibility for fish, wildlife, and plant resources and the recreational use of those resources, the Department has concerns and recommendations regarding management activities proposed by the NPS which can affect those resources. The Department urges the NPS to consult with the Department regarding these activities.

In conclusion, the Department finds that the DEIS is inadequate under NEPA guidelines. The DEIS should be rewritten, incorporating the Department's comments and concerns, and should be recirculated for review. Department staff are available to consult with NPS staff in this regard, if requested.

The Department appreciates the opportunity to comment on this DEIS. If you have any questions or comments please contact Mr. Alan Pickard, Habitat Conservation Supervisor, at 407 W. Line Street, Bishop, CA 93514; telephone 760-872-1171.

  
Curt Taucher  
Regional Manager

cc: Mr. Alan Pickard, Bishop  
Mr. Ray Bransfield, USFWS Ventura  
Area Manager BLM, Barstow

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CDFG45. See response to CDFG11 which includes a summary of consultation and attempts at consultation with the department.